

**! IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

IN RE:	§	
	§	
DEEPROOT CAPITAL MANAGEMENT, LLC, ET AL., <sup>1</sup>	§	BANKRUPTCY No. 21-51523
	§	
DEBTORS.	§	JOINTLY ADMINISTERED

---

**TRUSTEE’S APPLICATION TO EMPLOY MEL T. DAVIS AS AUCTIONEER**

---

**TO THE HONORABLE MICHAEL B. PARKER, U.S. BANKRUPTCY JUDGE:**

John Patrick Lowe (the “**Trustee**”), the duly appointed chapter 7 trustee of the jointly administered bankruptcy estate of deeproot Capital Management, LLC, et al., (collectively, the “**Debtors**”), files this *Application to Employ Mel T. Davis as Auctioneer* (the “**Application**”) and respectfully shows the Court as follows:

**SUMMARY**

1. The Trustee, as the successor in interest to the Debtors, acquired certain rights and interests to the Debtors’ property, specifically parts, inventory, equipment, and furniture (the “**Assets**”) stored at two formerly leased San Antonio offices: 12669 Silicon Drive, San Antonio, Texas 78249 and 12621 Silicon Drive, San Antonio, Texas 78249 (the “**Properties**”). The Trustee intends to sell the Assets at a public auction to clear the Assets from the Properties so that the

---

<sup>1</sup> The Debtors in these chapter 7 cases, along with the last four digits of each Debtor's federal tax identification number, are: Policy Services, Inc. (2864), Wizard Mode Media, LLC (3205), deeproot Pinball LLC (0320), deeproot Growth Runs Deep Fund, LLC (8046), deeproot 575 Fund, LLC (9404), deeproot 3 Year Bonus Income Debenture Fund, LLC (7731), deeproot Bonus Growth 5 Year Debenture Fund, LLC (9661), deeproot Tech LLC (9043), deeproot Funds LLC (9404), deeproot Studios LLC (6283), and deeproot Capital Management, LLC (2638).

landlords can each re-lease or sell the Properties. The Trustee requests that the Court authorize the employment of Mel T. Davis as auctioneer for the estate.

2. A copy of the proposed order granting the requested relief is attached as Exhibit A.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 1557(b)(2). The statutory predicates to this Application are 11 U.S.C. §§ 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Rule 2014.

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND**

3. On December 9, 2021, (the “**Petition Date**”), Policy Services, Inc., Wizard Mode Media, LLC, deeproot Pinball LLC, deeproot Growth Runs Deep Fund, LLC, deeproot 575 Fund, LLC, deeproot 3 Year Bonus Income Debenture Fund, LLC, deeproot BonusGrowth 5 Year Debenture Fund, LLC, deeproot Tech LLC, deeproot Funds LLC, deeproot Studios LLC, deeproot Capital Management, LLC (collectively the “**Debtors**”) filed voluntary petitions under Chapter 7 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “**Bankruptcy Code**”).

4. On December 9, 2021, Trustee was duly appointed as interim Chapter 7 Trustee in seven of the eleven chapter 7 cases. The chapter 7 trustee on the other four related cases resigned on December 20, 2021 (ECF No. 17), and, on December 21, 2021, the Trustee was duly appointed as the interim Chapter 7 Trustee in the remaining four related cases (ECF No. 19).

5. On December 20, 2021, the Court granted the Debtors’ Expedited Motion for Joint Administration. (ECF No. 20).

## **ARGUMENT AND AUTHORITIES**

### **A. Employment of Mel T. Davis as Auctioneer**

3. Courts routinely approve the employment of consultants and professionals. *See In re Logix Communications*, Case No. 02-32105-H5-11 (Bankr. S.D. Tex.); *In re American Homestar*, Case No. 01-80017-G3-11 (Bankr. S.D. Tex.); *In re Perry Gas Companies, Inc.*, 00-37884-H5-11 (Bankr. S.D. Tex.); *In re American Rice*, Case No. 98-21254-C-11 (Bankr. S.D. Tex.). Retention of professionals is specifically provided for in the Bankruptcy Code. “[T]he trustee, with the court’s approval, may employ one or more . . . other professional persons that do not hold an interest adverse to the estate ....” 11 U.S.C. §327(a). Such professionals must not have a connection with Debtors and must be “disinterested persons” as that term is defined in the code.

4. Further, section 328(a) provides, in part, that the Trustee “...with the court’s approval, may employ or authorize the employment of a professional person under section . . . 1103 of this title . . . on any reasonable terms and conditions of employment ....” 11 U.S.C. § 328(a). Of course, under section 328(a), the proposed compensation remains reviewable by the Court “if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time” this Application is approved. *Id.*

#### **i. Professional Experience**

5. The Trustee desires to employ Mel T. Davis, doing business at 14895 Donop Road, San Antonio, Texas, and P.O. Box 236, Elmendorf, Texas 78112, to conduct a public auction of this Assets and of any other assets subsequently obtained or recovered by the Trustee.

6. Mel T. Davis is an experienced, qualified and competent auctioneer with the requisite experience to conduct this auction. Mel T. Davis is well known to the buying public.

7. The Trustee has retained Mr. Davis as an auctioneer for the estates in several unrelated Chapter 7 and 11 cases in which Trustee has served or serves as Trustee.

**ii. Services to be Rendered**

8. The Trustee has requested Mel T. Davis to act as the auctioneer for the estate. Specifically, Mel T. Davis will assist the Trustee in the liquidation of inventory, equipment, and furniture belonging to the Debtors.

9. The Trustee and Mel T. Davis agree that the services that Mr. Davis will provide to the Trustee for the estate will be appropriately directed by Trustee to avoid duplicative efforts among any other professionals retained in these Bankruptcy Cases.

**iii. Compensation**

10. The Trustee proposes to pay a ten percent (10%) commission to Mel T. Davis for this sale and to reimburse him for advertising and moving expenses.

11. The Trustee also proposes that Mel T. Davis be authorized to charge a fifteen percent (15%) buyer's commission in part to defray credit card and check charges. This buyer's commission will be paid by the buyers and not from the sales proceeds to help defray the costs of credit card and check transactions; storage and security charges; and the costs of insurance. These costs shall not be duplicative of out-of-pocket expenses described above

12. In the opinion of the Trustee, the proposed commission for these services is reasonable.

**iv. Disinterestedness**

13. To the best of the Trustee's knowledge, Mel T. Davis has no connection with any parties in interest, including the Debtors or any creditor, or their attorneys or accountants, the United States Trustee, or any person employed in the office of the United States Trustee, and has

no interest adverse to the bankruptcy estates that would disqualify him from employment. Mr. Davis appears to be a disinterested person within the meaning of 11 U.S.C. §101(14).

14. The Affidavit of Mel T. Davis in support of this Application is attached hereto as Exhibit B. In the Affidavit, Mr. Davis discloses that he has no connection to any Debtors, creditors, or any other party, and that he has not agreed to share any compensation that this Court might allow.

15. The Trustee has not filed an application to employ, or employed, any other professional in the same profession as Mel T. Davis, auctioneer. The Trustee has not given any compensation or promised any compensation to Mel T. Davis, auctioneer, and has not given any security or pledge to said auctioneer. There is no written employment or retainer agreement between the estates and Mr. Davis.

#### **PRAYER**

**WHEREFORE**, the Trustee respectfully requests that the Court enter an Order approving the *Application to Employ Mel T. Davis as Auctioneer*, as set forth above, and grant the Trustee such other relief as is just and proper.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Respectfully submitted,

**PULMAN, CAPPuccio, & PULLEN, LLP**  
2161 NW Military Highway, Suite 400  
San Antonio, Texas 78213  
(210) 222-9494 Telephone  
(210) 892-1610 Facsimile

By: /s/ Randall A. Pulman

Randall A. Pulman  
Texas State Bar No. 16393250  
[rpulman@pulmanlaw.com](mailto:rpulman@pulmanlaw.com)  
Anna K. MacFarlane  
Texas State Bar No. 24116701  
[amacfarlane@pulmanlaw.com](mailto:amacfarlane@pulmanlaw.com)

**ATTORNEYS FOR JOHN PATRICK LOWE,  
CHAPTER 7 TRUSTEE FOR THE JOINTLY  
ADMINISTERED CASE OF IN RE DEEPROOT  
CAPITAL MANAGEMENT, LLC ET AL.**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31<sup>st</sup> day of January, 2022, I electronically filed the foregoing document using the CM/ECF system, which will serve the document on the following list of parties in interest and parties requesting notice and it was mailed to the Debtors via US First Class Mail, as indicated below. A supplemental Certificate of Service will be filed relating to service on the entire creditor matrix.

**Via US First Class Mail**

Policy Services, Inc.  
deeproot Pinball, LLC  
deeproot Growth Runs Deep Fund, LLC  
deeproot 575 Fund, LLC  
deeproot 3 Year Bonus Income Fund, LLC  
deeproot BonusGrowth 5 Year Debenture Fund, LLC  
deeproot Tech, LLC  
deeproot Funds, LLC  
deeproot Studios, LLC  
deeproot Capital Management, LLC  
12621 Silicon Dr.  
San Antonio, TX 78249

**Via US First Class Mail**

Wizard Mode Media, LLC  
12227 S. Business Park Drive, Suite 130  
Draper, UT 84020  
Debtor's Counsel

**Via CM/ECF: [pat.lowe.law@gmail.com](mailto:pat.lowe.law@gmail.com)**

John Patrick Lowe  
2402 East Main Street  
Uvalde, TX 78801

**Via CM/ECF:**

**[catherine.curtis@wickphillips.com](mailto:catherine.curtis@wickphillips.com);[jason.rudd@wickphillips.com](mailto:jason.rudd@wickphillips.com)**

Catherine A. Curtis  
Jason M. Rudd  
Wick Phillips Gould & Martin, LLP  
3131 McKinney Ave, Suite 500  
Dallas, TX 75204

**Via CM/ECF:**

**[USTPRegion07.SN.ECF@usdoj.gov](mailto:USTPRegion07.SN.ECF@usdoj.gov)**

United States Trustee - SA12  
US Trustee's Office  
615 E Houston, Suite 533  
San Antonio, TX 78295-1539

**Via CM/ECF: [rbattaglia@outlook.com](mailto:rbattaglia@outlook.com)**

Raymond W. Battaglia  
Law Offices of Ray Battaglia, PLLC  
66 Granburg Circle  
San Antonio, TX 78218

**Via CM/ECF: [jpetree@mcsllaw.com](mailto:jpetree@mcsllaw.com)**

Jonathan Petree  
McGuire, Craddock & Strother, P.C.  
500 N. Akard Street Suite 2200  
Dallas, TX 75201

**Via CM/ECF: [jdunne@smfadlaw.com](mailto:jdunne@smfadlaw.com)**

John C. Dunne  
SMFAD Law  
1001 McKinney Street #1100  
Houston, TX 77002

**Via CM/ECF: [bk-cmurphy@oag.texas.gov](mailto:bk-cmurphy@oag.texas.gov)**

Texas Workforce Commission  
c/o Christopher S. Murphy  
Texas Attorney General's Office  
PO Box 12548  
Austin, TX 78711

/s/ Randall A. Pulman

Randall A. Pulman

# **EXHIBIT A**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

IN RE:	§	
	§	
DEEPROOT CAPITAL MANAGEMENT,	§	
LLC, ET AL.,	§	BANKRUPTCY No. 21-51523
	§	
DEBTORS.	§	JOINTLY ADMINISTERED

---

**ORDER GRANTING TRUSTEE’S APPLICATION TO EMPLOY MEL T. DAVIS AS AUCTIONEER**

---

The Court has considered the matter before the Court on the *Application to Employ Mel T. Davis as Auctioneer* (the “**Application**”),<sup>1</sup> any responses to the Application, the statements of counsel, and the records in this case, and having held a hearing on the Application, finds that: (a) it has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) the relief requested in the Application is in the best interests of the Debtor’s estate, its creditors, and other parties-in-interest; (d) proper and adequate notice of the application and hearing hereon has been given and no other or further notice is necessary; and

---

<sup>1</sup> All capitalized terms not expressly defined herein shall have the meaning ascribed to them in the Application.

(e) good and sufficient cause exists for granting the relief requested. Therefore, it is **ORDERED** that the Trustee's Application is in all things **GRANTED**.

**IT IS FURTHER ORDERED** that the Trustee is authorized to employ Mel T. Davis as auctioneer on the terms and conditions stated in the Application.

**IT IS FURTHER ORDERED** that the Trustee is authorized to compensate Mel T. Davis by paying a ten percent (10%) commission from the sales proceeds and reimburse him for reasonable advertising and moving expenses.

**IT IS FURTHER ORDERED** that Mel T. Davis, auctioneer, is authorized to charge a fifteen percent (15%) buyer's commission which will be paid by the buyers and not from the sales proceeds to help defray the costs of credit card and check transactions; storage and security charges; and the costs of insurance. These costs shall not be duplicative of out-of-pocket expenses described above

**IT IS FURTHER ORDERED** that the Trustee is authorized to take any actions reasonably necessary to effectuate the relief granted by this order.

**IT IS FURTHER ORDERED** that the Court shall retain jurisdiction to hear and determine all disputes arising from or related to the implementation, interpretation, or enforcement of this order.

###

Submitted by:

Randall A. Pulman  
Texas State Bar No. 16393250

[rpulman@pulmanlaw.com](mailto:rpulman@pulmanlaw.com)

Anna MacFarlane

Texas State Bar No. 24116701

[amacfarlane@pulmanlaw.com](mailto:amacfarlane@pulmanlaw.com)

**PULMAN, CAPPUCCIO, & PULLEN, LLP**

2161 NW Military Highway, Suite 400

San Antonio, Texas 78213

(210) 222-9494 Telephone

(210) 892-1610 Telecopier

**ATTORNEYS FOR JOHN PATRICK LOWE,  
CHAPTER 7 TRUSTEE FOR THE JOINTLY  
ADMINISTERED CASE OF IN RE DEEPROOT  
CAPITAL MANAGEMENT, LLC ET AL.**

# **EXHIBIT B**

State of Texas §

County of Bexar §

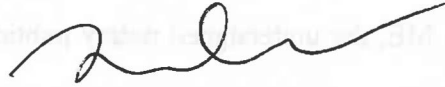
BEFORE ME, the undersigned notary public, on this day personally appeared Mel T. Davis, who, being by me duly sworn on his oath deposed and said as follows:

"My name is Mel T. Davis, and I am an auctioneer doing business at P.O. Box 236, Elmendorf, Texas 78112, phone number (210) 633-2445. I have reviewed the petition and the mailing matrix in the Chapter 7 bankruptcy cases filed by deeproot Capital Management, LLC, et. al.,<sup>1</sup> 21-51523-mmp in the United States Bankruptcy Court for the Western District of Texas, San Antonio Division. To the best of my information and belief, I do not have any connection with the Debtors, the Chapter 7 Trustee, any creditors, any other party in interest or their respective attorneys and accountants, the United States Trustee or any person employed in the office of the United States Trustee. As auctioneer or real estate broker, I have assisted John Patrick Lowe in liquidating real and personal property in other unrelated Chapter 7 and 11 cases in which he serves or served as the Trustee. I do not hold or represent any interest adverse to the bankruptcy estates of deeproot Capital Management, LLC, et. al.,<sup>1</sup>. I am a disinterested person within the meaning of 11 U. S. Code §§ 101(14) and 327(a).

---

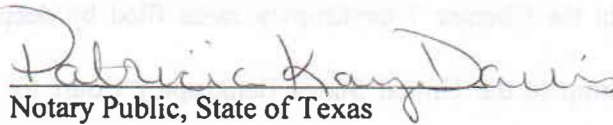
<sup>1</sup> The Debtors in these chapter 7 cases, along with the last four digits of each Debtor's federal tax identification number, are: Policy Services, Inc. (2864), Wizars Mode Media, LLC (3205), deeproot Pinball LLC (0320), deeproot Growth Runs Deep Fund, LLC (8046), deeproot 575 Fund, LLC (9404), deeproot 3 Year Bonus Income Debenture Fund, LLC (7731), deeproot Bonus Growth 5 Year Debenture Fund, LLC (9661), deeproot Tech LLC (9043), deeproot Funds LLC (9404), deeproot Studios LLC (6283), and deeproot Capital Management, LLC (2638).

No compensation has been paid or agreed to be paid to Affiant within one year prior to the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with this case. Any compensation which is allowable by this Court will not be shared by any entity other than Affiant.



Mel T. Davis

SUBSCRIBED AND SWORN TO BEFORE ME on the 24<sup>th</sup> day of January 2022 to certify which witness my hand and official seal of office.



Notary Public, State of Texas

